

WORLD TRADE ORGANIZATION

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INDIA - PATENT PROTECTION FOR PHARMACEUTICAL AND AGRICULTURAL CHEMICAL PRODUCTS

Request for Consultations by the United States

The following communication, dated 2 July 1996, from the Permanent Mission of the United States to the Permanent Mission of India and the Dispute Settlement Body is circulated pursuant to paragraph 4 of the DSU.

My authorities have instructed me to request consultations with the Government of India pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and Article 64 of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS") (to extent that it incorporates by reference Article XXII of the General Agreement on Tariffs and Trade 1994) regarding the absence in India of either patent protection for pharmaceutical and agricultural chemical products or formal systems that permit the filing of patent applications for pharmaceutical and agricultural chemical products and that provide exclusive marketing rights in such products.

The TRIPS Agreement obligates all Members of the World Trade Organization ("WTO") that do not provide product patent protection for pharmaceutical and agricultural chemicals on the date of entry into force of the WTO Agreement (1 January 1995), to establish a means by which applications for patent for such inventions can be filed and a system by which such applications will be examined when those Members provide protection consistent with Article 27 of the TRIPS Agreement. It also obligates such Members to establish a system whereby exclusive marketing rights will be granted in products that are the subject of such an application, subject to certain stated requirements. These obligations were to be fulfilled as of the date of entry into force of the WTO Agreement.

India's laws currently do not provide product patent protection for pharmaceutical or agricultural chemical inventions, or systems that conform to Articles 70.8 and 70.9 of the TRIPS Agreement, with regard to the filing and examination of applications and the grant of exclusive marketing rights. As a result, India's legal regime appears to be inconsistent with India's obligations under the TRIPS Agreement, including but not necessarily limited to Article 27, 65, and 70 of the Agreement.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.